

(b) For a fixed price type contract, advance payments made to a protege firm shall be paid and administered as if there were 100 percent progress payments. The Contractor shall include as a separate attachment with each Standard Form (SF) 1443, Contractor's Request for Progress Payment, a request for reimbursement of advance payments made to a protege firm. The attachment shall provide a separate calculation of lines 14a through 14e of SF 1443 for each protege, reflecting the status of advance payments made to that protege.

(c) For cost reimbursable, contracts, reimbursement of advance payments shall be made via public voucher. The Contractor shall show the amounts of advance payments made to each protege on the public voucher, in the form and detail directed by the cognizant contracting officer or contract auditor.

(End of clause)

[56 FR 67221, Dec. 30, 1991, as amended at 57 FR 53602, Nov. 12, 1992]

252.232-7006 Reduction or suspension of contract payments upon finding of fraud.

As prescribed in 232.111-70, use the following clause:

REDUCTION OR SUSPENSION OF CONTRACT PAYMENTS UPON FINDING OF FRAUD (AUG. 1992)

(a) 10 U.S.C. 2307(e) permits the head of the agency to reduce or suspend further payments to the Contractor upon a written determination by the agency head that substantial evidence exists that the Contractors request for advance, partial, or progress payments is based on fraud. The provisions of 10 U.S.C. 2307(e) are in addition to any other rights or remedies provided the Government by law or under contract.

(b) Actions taken by the Government in accordance with 10 U.S.C. 2307(e) shall not constitute an excusable delay under the Default clause of this contract or otherwise relieve the Contractor of its obligations to perform under this contract.

(End of clause)

[57 FR 42633, Sept. 15, 1992]

252.232-7007 Limitation of Government's obligation.

As prescribed in 232.705-70, use the following clause:

**LIMITATION OF GOVERNMENT'S OBLIGATION
(AUG. 1993)**

(a) Contract line item(s) _____* through _____* are incrementally funded. For these item(s), the sum of \$_____* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause, or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

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(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) or (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract.....\$
(month) (day), 199x.....\$
(month) (day), 199y.....\$
(month) (day), 199z.....\$

(End of clause)

ALTERNATE I (AUG. 1993)

If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause.

(a) Contract line item ____ is incrementally funded. The sum of \$ ____ * is presently

available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.

*To be inserted after negotiation.

[58 FR 46093, Sept. 1, 1993]

252.233-7000 Certification of claims and requests for adjustment or relief.

As prescribed in 233.7001, use the following clause:

CERTIFICATION OF CLAIMS AND REQUESTS FOR ADJUSTMENT OR RELIEF (MAY 1994)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Pub. L. 85-804, or other similar request exceeding \$100,000 shall bear, at the time of submission, the following certificate given by an individual who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contracting believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(Official's Name)

(Title)

(b) The certification in paragraph (a) of this clause requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) of this clause does not apply to:

(1) Requests for routine contract payments; for example, those for payment for accepted supplies and services, routine vouchers under cost-reimbursement type contracts, and progress payment invoices; or

(2) Final adjustments under incentive provisions of contracts.

(d) In those situations where no claim certification for the purposes of 10 U.S.C. 2410e has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act (41 U.S.C. 601 *et seq.*) but signed by an individual who is authorized to bind the contractor and who has knowledge of the basis of the claim or request, knowledge of the accuracy and completeness of the supporting data, and knowledge of the claim or request, will satisfy the certification requirements of both statutes.

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(e) If this is a request for equitable adjustment under a substantially completed contract or a completed contract, the certification will be expanded to include the following:

This claim includes only costs for performing the alleged change, and does not include any costs which have already been reimbursed or which have been separately claimed. All indirect costs claimed are properly allocable to the alleged change in accordance with applicable acquisition regulations. I am aware that the submission of a false claim to the Government can result in the assessment of significant criminal and civil penalties and fines.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 58 FR 28475, May 13, 1993; 59 FR 27676, May 27, 1994]

252.234-7000 Notice of cost/schedule control systems.

As prescribed by 234.005-70, use the following provision:

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (DEC. 1991)

(a) The Offeror shall submit a comprehensive plan for compliance with the cost/schedule control systems criteria of DoDI 5000.2, Defense Acquisition Management Policies and Procedures. The plan shall—

(1) Describe the cost/schedule control systems (C/SCS) the Offeror intends to use in performance of the contract.

(2) Distinguish between the Offeror's existing management systems and modifications proposed to meet the criteria.

(3) Describe the management systems and their application in all major functional cost areas in terms of:

- (i) The work breakdown structure,
- (ii) Planning,
- (iii) Budgeting,
- (iv) Scheduling,
- (v) Work authorization,
- (vi) Cost accumulation,
- (vii) Measurement and reporting of cost and schedule performance,
- (viii) Variance analysis, and
- (ix) Baseline control.

(4) Describe compliance with each of the criteria. (Preferably, cross-reference appropriate elements in the description of systems with the items in the checklist for the C/SCS criteria in AFMCP 173-5, AMC-P 715-5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47, Cost/Schedule Control Systems Criteria Joint Implementation Guide.)

(5) Identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria.

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(6) Describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the Offeror is using C/SCS which have been accepted by the Government, or is operating C/SCS under a current Memorandum of Understanding, the Offeror may submit either instead of the comprehensive plan.

(c) The Offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The Government will evaluate the Offeror's plan for C/SCS before contract award.

(e) The prime contractor and the Government shall agree to subcontractors selected for application of the C/SCS criteria. The Contractor will contractually require the selected subcontractors to comply with the criteria. If either the prime or subcontractor requests, the Government, at its option, may conduct demonstrations and reviews of these selected subcontractors' management systems.

(End of provision)

[56 FR 36479, July 31, 1991, as amended at 56 FR 67222, Dec. 30, 1991; 59 FR 27676, May 27, 1994]

252.234-7001 Cost/schedule control systems.

As prescribed in 234.005-70, use the following clause:

COST/SCHEDULE CONTROL SYSTEMS (DEC. 1991)

(a) The Contractor shall establish, maintain, and use in the performance of this contract cost/schedule control systems (C/SCS) meeting the criteria of DoDI 5000.2, Defense Acquisition Management Policies and Procedures.

(b) Within 90 calendar days of contract award, or a longer period if the Contracting Officer agrees, the Contractor shall—

(1) Furnish the Contracting Officer a description of the C/SCS applicable to this contract. The description shall—

(i) Be in the form and detail as indicated by the AFMCP 173-5, AMC-P 715-5, NAVSO P3627, DLAH 8400.2, DCAA P7641.47 Cost Schedule Control Systems Criteria Joint Implementation Guide (the Guide); or

(ii) Be in the form and detail required by the Contracting Officer.

(2) Be prepared to demonstrate the operation of the Contractor's C/SCS to the Government for compliance with the criteria of DoDI 5000.2.

(c) The Contracting Officer shall reference the description of the accepted C/SCS in the contract. The Contractor shall maintain and

use the accepted C/SCS in the performance of this contract.

(d) The Contractor shall submit proposed changes to the accepted C/SCS to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within 60 days after receipt.

(e) When systems existing at time of contract award do not comply with the criteria, the Contractor shall make adjustments necessary to ensure compliance at no change in contract price or fee.

(f) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative. Access is for the purpose of reviewing the demonstration in paragraph (b) of this clause and also to permit Government surveillance to ensure continuing application of the accepted systems to this contract.

(g) The Contractor shall correct deviations from accepted systems discovered during contract performance, as directed by the Contracting Officer.

(h) The Contractor shall require that each selected subcontractor, as agreed to by the Contracting Officer, shall meet the C/SCS criteria as set forth in the Guide. All such subcontracts shall have provisions for demonstration, review, acceptance, and surveillance of systems, to be conducted by the Government, at its option, when requested by the Contractor or subcontractor.

(i) If the Contractor or subcontractor is utilizing C/SCS which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions concerning demonstration and review.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 59 FR 27677, May 27, 1994]

252.235-7000 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed in 235.070-3, use the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354—FIXED PRICE (DEC. 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term *third persons* includes employees of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) Must be certified as just and reasonable by the Secretary of the department or designated representative.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contracts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.